

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ANTOLIN ANDREW MARKS,

Plaintiff,

v.

JACK BENNET *et al.*,

Defendants.

Case No. C07-5372RBL

REPORT AND
RECOMMENDATION

**NOTED FOR:
September 21, 2007**

This 42 U.S.C. § 1983/Bivens action has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636 (b) and local Rules MJR 3 and 4. Plaintiff has filed a proposed complaint and applied for *in forma pauperis* status (Dkt. # 1). Plaintiff is incarcerated at the Northwest Detention Center and is going through the process of deportation proceedings. In the proposed complaint Mr. Marks alleges the named defendants refused to mail 285 letters at one time as legal mail. Mr. Marks alleges the letters are to congressmen. Mr. Marks admits the defendants will mail the documents, at no cost to him, at the rate of five pieces of mail per week.

Review of his application to proceed *in forma pauperis* reveals that Mr. Marks has \$811.40

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1 in his personal property and he is not indigent (Dkt. # 1). The district court may permit indigent
2 litigants to proceed *in forma pauperis* upon completion of a proper affidavit of indigence. *See* 28
3 U.S.C. § 1915(a). However, the court has broad discretion in denying an application to proceed in
4 forma pauperis. Weller v. Dickson, 314 F.2d 598 (9th Cir. 1963), *cert. denied*, 375 U.S. 845
5 (1963).

6 Based on the above, the Court should deny plaintiff's application to proceed *in forma pauperis*.
7 Plaintiff has not shown that is unable to pay the full filing fee to proceed with his lawsuit. The court
8 should direct Mr. Marks to pay the filing within 30 days of the court's order and if he fails to pay the
9 filing fee the clerk should be directed to dismiss this matter.

10 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure,
11 the parties shall have ten (10) days from service of this Report to file written objections. *See also*
12 Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of
13 appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule
14 72(b), the clerk is directed to set the matter for consideration on **September 21, 2007**, as noted in
15 the caption.

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17 DATED this 28 day of August, 2007.

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19 /S/ J. Kelley Arnold
20 J. Kelley Arnold
21 United States Magistrate Judge
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